
SENATE BILL 6165

State of Washington

59th Legislature

2006 Regular Session

By Senators Hargrove, Zarelli, McAuliffe, Esser, Doumit, Schmidt, Kohl-Welles, Benson, Keiser, Roach, Fairley, Weinstein, Rockefeller, Rasmussen, Franklin, Brown and Kline

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1 AN ACT Relating to improving access to and the stability of quality
2 child care through providing collective bargaining and other
3 representation rights for family child care providers and licensees;
4 amending RCW 41.56.030, 41.56.113, 41.04.810, and 43.01.047; adding a
5 new section to chapter 41.56 RCW; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.56 RCW
8 to read as follows:

9 (1) In addition to the entities listed in RCW 41.56.020, this
10 chapter applies to the governor with respect to family child care
11 providers. Solely for the purposes of collective bargaining and as
12 expressly limited under subsections (2) and (3) of this section, the
13 governor is the public employer of family child care providers who,
14 solely for the purposes of collective bargaining, are public employees.
15 The public employer shall be represented for bargaining purposes by the
16 governor or the governor's designee appointed under chapter 41.80 RCW.

17 (2) This chapter governs the collective bargaining relationship
18 between the governor and family child care providers, except as
19 follows:

1 (a) A statewide unit of all family child care providers is the only
2 unit appropriate for purposes of collective bargaining under RCW
3 41.56.060.

4 (b) A statewide unit of all family child care licensees is
5 appropriate for purposes other than collective bargaining and may
6 engage through a representative in negotiated rule making under RCW
7 34.05.310.

8 (c) As of the effective date of this act, the exclusive bargaining
9 representative of family child care providers in the unit specified in
10 (a) of this subsection and the representative of family child care
11 licensees in the unit specified in (b) of this subsection shall be the
12 representatives selected as the majority representatives in elections
13 held pursuant to the directive of the governor to the secretary of the
14 department of social and health services, dated September 16, 2005. If
15 family child care providers or family child care licensees seek to
16 select different representatives thereafter, the procedures specified
17 in RCW 41.56.040 through 41.56.080 apply.

18 (d) In addition to the matters subject to collective bargaining in
19 RCW 41.56.030(4), child care subsidies shall be subject to collective
20 bargaining.

21 (e) The mediation and interest arbitration provisions of RCW
22 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

23 (i) With respect to commencement of negotiations between the
24 governor and the exclusive bargaining representative of family child
25 care providers, negotiations shall be commenced initially by February
26 1, 2007, and thereafter, by February 1 of any year prior to the year in
27 which an existing collective bargaining agreement expires;

28 (ii) In addition to the factors to be taken into consideration by
29 an interest arbitration panel under RCW 41.56.465, the panel shall
30 consider the financial ability of the state to pay for the provisions
31 of a collective bargaining agreement; and

32 (iii) The decision of the arbitration panel is not binding on the
33 legislature and, if the legislature does not approve the request for
34 funds necessary to implement the provisions of the arbitrated
35 collective bargaining agreement, is not binding on the state.

36 (f) Family child care providers do not have the right to strike.

37 (3) Family child care providers who are public employees solely for
38 the purposes of collective bargaining under subsection (1) of this

1 section are not, for that reason, employees of the state for any
2 purpose. This section applies only to the governance of the collective
3 bargaining relationship between the employer and family child care
4 providers as provided in subsections (1) and (2) of this section.

5 (4) This section does not modify:

6 (a) The parents' or legal guardians' right to choose and terminate
7 the services of any family child care provider that provides care for
8 their child or children; and

9 (b) The legislature's right to make programmatic modifications to
10 the delivery of state services through child care subsidy programs,
11 including standards of eligibility of parents, legal guardians, and
12 family child care providers participating in child care subsidy
13 programs, and the nature of services provided. The governor shall not
14 enter into, extend, or renew any agreement under this section that does
15 not expressly reserve the legislative rights described in this
16 subsection (4)(b).

17 (5) Upon meeting the requirements of subsection (6) of this
18 section, the governor must submit, as a part of the proposed biennial
19 or supplemental operating budget submitted to the legislature under RCW
20 43.88.030, a request for funds necessary to implement the provisions of
21 a collective bargaining agreement entered into under this section or
22 for legislation necessary to implement such agreement.

23 (6) A request for funds necessary to implement the provisions of a
24 collective bargaining agreement entered into under this section shall
25 not be submitted by the governor to the legislature unless such
26 request:

27 (a) Has been submitted to the director of financial management
28 prior to the legislative session at which the request is to be
29 considered; and

30 (b) Has been certified by the director of financial management as
31 being feasible financially for the state or reflects the binding
32 decision of an arbitration panel reached under this section.

33 (7) The legislature must approve or reject the submission of the
34 request for funds as a whole. If the legislature rejects or fails to
35 act on the submission by April 1 of an odd-numbered year or March 1 of
36 an even-numbered year, any such agreement will be reopened solely for
37 the purpose of renegotiating the funds necessary to implement the

1 agreement and resubmitted to the legislature before the end of the
2 session in which the rejection or failure to act occurs.

3 (8) The governor shall periodically consult with the joint
4 committee on employment relations established by RCW 41.80.010
5 regarding appropriations necessary to implement the provisions of any
6 collective bargaining agreement and, upon completion of negotiations,
7 advise the committee on the elements of the agreement and on any
8 legislation necessary to implement such agreement.

9 (9) After the expiration date of any collective bargaining
10 agreement entered into under this section, all of the terms and
11 conditions specified in any such agreement remain in effect until the
12 effective date of a subsequent agreement, not to exceed one year from
13 the expiration date stated in the agreement, except as provided in
14 subsection (4)(b) of this section.

15 (10) If, after the provisions of an agreement are approved by the
16 legislature, a significant revenue shortfall occurs resulting in
17 reduced appropriations, as declared by proclamation of the governor or
18 by resolution of the legislature, both parties shall immediately enter
19 into collective bargaining for a mutually agreed upon modification of
20 the agreement.

21 (11) In enacting this section, the legislature intends to provide
22 state action immunity under federal and state antitrust laws for the
23 joint activities of family child care providers and their exclusive
24 bargaining representatives to the extent such activities are authorized
25 by this chapter.

26 **Sec. 2.** RCW 41.56.030 and 2004 c 3 s 6 are each amended to read as
27 follows:

28 As used in this chapter:

29 (1) "Public employer" means any officer, board, commission,
30 council, or other person or body acting on behalf of any public body
31 governed by this chapter, or any subdivision of such public body. For
32 the purposes of this section, the public employer of district court or
33 superior court employees for wage-related matters is the respective
34 county legislative authority, or person or body acting on behalf of the
35 legislative authority, and the public employer for nonwage-related
36 matters is the judge or judge's designee of the respective district
37 court or superior court.

1 (2) "Public employee" means any employee of a public employer
2 except any person (a) elected by popular vote, or (b) appointed to
3 office pursuant to statute, ordinance or resolution for a specified
4 term of office as a member of a multimember board, commission, or
5 committee, whether appointed by the executive head or body of the
6 public employer, or (c) whose duties as deputy, administrative
7 assistant or secretary necessarily imply a confidential relationship to
8 (i) the executive head or body of the applicable bargaining unit, or
9 (ii) any person elected by popular vote, or (iii) any person appointed
10 to office pursuant to statute, ordinance or resolution for a specified
11 term of office as a member of a multimember board, commission, or
12 committee, whether appointed by the executive head or body of the
13 public employer, or (d) who is a court commissioner or a court
14 magistrate of superior court, district court, or a department of a
15 district court organized under chapter 3.46 RCW, or (e) who is a
16 personal assistant to a district court judge, superior court judge, or
17 court commissioner(~~(, or (f) excluded from a bargaining unit under RCW~~
18 ~~41.56.201(2)(a))~~). For the purpose of (e) of this subsection, no more
19 than one assistant for each judge or commissioner may be excluded from
20 a bargaining unit.

21 (3) "Bargaining representative" means any lawful organization which
22 has as one of its primary purposes the representation of employees in
23 their employment relations with employers.

24 (4) "Collective bargaining" means the performance of the mutual
25 obligations of the public employer and the exclusive bargaining
26 representative to meet at reasonable times, to confer and negotiate in
27 good faith, and to execute a written agreement with respect to
28 grievance procedures and collective negotiations on personnel matters,
29 including wages, hours and working conditions, which may be peculiar to
30 an appropriate bargaining unit of such public employer, except that by
31 such obligation neither party shall be compelled to agree to a proposal
32 or be required to make a concession unless otherwise provided in this
33 chapter.

34 (5) "Commission" means the public employment relations commission.

35 (6) "Executive director" means the executive director of the
36 commission.

37 (7) "Uniformed personnel" means: (a) Law enforcement officers as
38 defined in RCW 41.26.030 employed by the governing body of any city or

1 town with a population of two thousand five hundred or more and law
2 enforcement officers employed by the governing body of any county with
3 a population of ten thousand or more; (b) correctional employees who
4 are uniformed and nonuniformed, commissioned and noncommissioned
5 security personnel employed in a jail as defined in RCW 70.48.020(5),
6 by a county with a population of seventy thousand or more, and who are
7 trained for and charged with the responsibility of controlling and
8 maintaining custody of inmates in the jail and safeguarding inmates
9 from other inmates; (c) general authority Washington peace officers as
10 defined in RCW 10.93.020 employed by a port district in a county with
11 a population of one million or more; (d) security forces established
12 under RCW 43.52.520; (e) fire fighters as that term is defined in RCW
13 41.26.030; (f) employees of a port district in a county with a
14 population of one million or more whose duties include crash fire
15 rescue or other fire fighting duties; (g) employees of fire departments
16 of public employers who dispatch exclusively either fire or emergency
17 medical services, or both; or (h) employees in the several classes of
18 advanced life support technicians, as defined in RCW 18.71.200, who are
19 employed by a public employer.

20 (8) "Institution of higher education" means the University of
21 Washington, Washington State University, Central Washington University,
22 Eastern Washington University, Western Washington University, The
23 Evergreen State College, and the various state community colleges.

24 (9) "Home care quality authority" means the authority under chapter
25 74.39A RCW.

26 (10) "Individual provider" means an individual provider as defined
27 in RCW 74.39A.240(4) who, solely for the purposes of collective
28 bargaining, is a public employee as provided in RCW 74.39A.270.

29 (11) "Child care subsidy" means a payment from the state through a
30 subsidy program.

31 (12) "Family child care licensee" means a person who: (a) Provides
32 regularly scheduled care for a child or children in the home of the
33 provider or in the home of the child or children for periods of less
34 than twenty-four hours or, if necessary due to the nature of the
35 parent's work, for periods equal to or greater than twenty-four hours;
36 (b) does not receive child care subsidies; and (c) is licensed by the
37 state pursuant to RCW 74.15.030.

1 (13) "Family child care provider" means a person who: (a) Provides
2 regularly scheduled care for a child or children in the home of the
3 provider or in the home of the child or children for periods of less
4 than twenty-four hours or, if necessary due to the nature of the
5 parent's work, for periods equal to or greater than twenty-four hours;
6 (b) receives child care subsidies; and (c) may or may not be licensed
7 by the state pursuant to RCW 74.15.030.

8 (14) "Subsidy program" means a child care subsidy program
9 established pursuant to RCW 74.12.340 or any successor program.

10 **Sec. 3.** RCW 41.56.113 and 2004 c 3 s 7 are each amended to read as
11 follows:

12 (1) Upon the written authorization of an individual provider or a
13 family child care provider within the bargaining unit and after the
14 certification or recognition of the bargaining unit's exclusive
15 bargaining representative, the state as payor, but not as the employer,
16 shall, subject to subsection (3) of this section, deduct from the
17 payments to an individual provider or a family child care provider the
18 monthly amount of dues as certified by the secretary of the exclusive
19 bargaining representative and shall transmit the same to the treasurer
20 of the exclusive bargaining representative.

21 (2) If the governor and the exclusive bargaining representative of
22 a bargaining unit of individual providers or family child care
23 providers enter into a collective bargaining agreement that:

24 (a) Includes a union security provision authorized in RCW
25 41.56.122, the state as payor, but not as the employer, shall, subject
26 to subsection (3) of this section, enforce the agreement by deducting
27 from the payments to bargaining unit members the dues required for
28 membership in the exclusive bargaining representative, or, for
29 nonmembers thereof, a fee equivalent to the dues; or

30 (b) Includes requirements for deductions of payments other than the
31 deduction under (a) of this subsection, the state, as payor, but not as
32 the employer, shall, subject to subsection (3) of this section, make
33 such deductions upon written authorization of the individual provider
34 or the family child care provider.

35 (3)(a) The initial additional costs to the state in making
36 deductions from the payments to individual providers or family child

1 care providers under this section shall be negotiated, agreed upon in
2 advance, and reimbursed to the state by the exclusive bargaining
3 representative.

4 (b) The allocation of ongoing additional costs to the state in
5 making deductions from the payments to individual providers or family
6 child care providers under this section shall be an appropriate subject
7 of collective bargaining between the exclusive bargaining
8 representative and the governor unless prohibited by another statute.
9 If no collective bargaining agreement containing a provision allocating
10 the ongoing additional cost is entered into between the exclusive
11 bargaining representative and the governor, or if the legislature does
12 not approve funding for the collective bargaining agreement as provided
13 in RCW 74.39A.300 or section 1 of this act, as applicable, the ongoing
14 additional costs to the state in making deductions from the payments to
15 individual providers or family child care providers under this section
16 shall be negotiated, agreed upon in advance, and reimbursed to the
17 state by the exclusive bargaining representative.

18 **Sec. 4.** RCW 41.04.810 and 2004 c 3 s 3 are each amended to read as
19 follows:

20 Individual providers, as defined in RCW 74.39A.240, and family
21 child care providers, as defined in RCW 41.56.030, are not employees of
22 the state or any of its political subdivisions and are specifically and
23 entirely excluded from all provisions of this title, except as provided
24 in RCW 74.39A.270 and section 1 of this act.

25 **Sec. 5.** RCW 43.01.047 and 2004 c 3 s 4 are each amended to read as
26 follows:

27 RCW 43.01.040 through 43.01.044 do not apply to individual
28 providers under RCW 74.39A.220 through 74.39A.300 or to family child
29 care providers under section 1 of this act.

30 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
31 conflict with federal requirements that are a prescribed condition to
32 the allocation of federal funds to the state, the conflicting part of
33 this act is inoperative solely to the extent of the conflict and with
34 respect to the agencies directly affected, and this finding does not
35 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal
2 requirements that are a necessary condition to the receipt of federal
3 funds by the state.

4 NEW SECTION. **Sec. 7.** This act may be known and cited as the
5 access to quality family child care act.

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